

Exhibit A

**INTERGOVERNMENTAL AGREEMENT
BETWEEN TRIMET AND CITY OF PORTLAND FOR IN-KIND
CONTRIBUTION TO RED LINE NEXT GENERATION
TRANSIT ORIENTED DEVELOPMENT PLANNING**

THIS INTERGOVERNMENTAL AGREEMENT (“Agreement”) is between the City of Portland, an Oregon Municipal Corporation, located at 1120 SW 5th Avenue, Room 1040, Portland, OR 97204, (“COP”), and the Tri-County Metropolitan Transportation District of Oregon, an Oregon mass transit district, 1800 SW 1st Ave., Suite 300, Portland, Oregon 97201 (“TriMet”).

RECITALS

1. TriMet and COP are authorized to enter into this Agreement pursuant to ORS 190.010.
2. TriMet owns and operates the public mass transit system serving the Portland, Oregon Metropolitan region within Washington, Multnomah and Clackamas counties. The transit system includes the MAX light rail system, composed of the Eastside/Banfield, Westside/Hillsboro, Airport, Interstate, Portland Transit Mall, I-205, and Portland-Milwaukie segments.
3. COP is a municipality, within the TriMet service district, which is responsible for land use and transportation planning within its jurisdictional boundaries.
4. TriMet is in the process of planning the MAX Red Line Extension and Reliability Improvements Project (“the Red Line Project”), which successfully entered FTA Project Development as a Small Starts project on July 22, 2019. Construction on the Red Line Project is will begin in the fall of 2021. The Red Line Project includes capital improvements that will increase the reliability for the entire MAX light rail system and allow the MAX Red Line to serve 10 additional stations west of Beaverton Transit Center.
5. On November 11, 2019, TriMet applied for \$700,000 in funding from the FTA Pilot Program for Transit Oriented Development (“FTA Pilot Program”) to help finance TOD planning work designed to activate under-developed station areas along the west extension of the MAX Red Line and the east portion of the Red Line corridor (“TOD Planning Project”). In addition to the \$700,000 requested through the FTA Pilot Program, the TriMet application identified another \$165, 000 in non-federal in-kind staff matching contributions from its jurisdictional partners and \$185,000 in non-federal funds from TriMet, for a total TOD Planning Project budget of \$1,050,000. The FTA approved TriMet’s application on June 11, 2020.
6. TriMet’s and the jurisdictional partners for the TOD Planning Project and their respective commitments are:
 - a. TriMet: Staff resources valued at \$185,000;
 - c. City of Portland: In-kind staff resources valued at \$130,000.

- e. City of Hillsboro: In-kind staff resources valued at \$15,000.
- f. City of Beaverton: In-kind staff resources valued at \$20,000.

NOW, THEREFORE, the premises in general being as stated in the foregoing Recitals, the Parties hereby agree as follows:

TERMS OF AGREEMENT

1. Purpose

The purpose of this Agreement is to memorialize the terms on which COP will provide in-kind staff resources to assist with the TOD Planning Project and meet TriMet's local match funding obligation to the FTA.

2. Term

This Agreement is effective from July 1, 2021 through December 31, 2023, unless terminated or extended by mutual agreement of the Parties in accordance with this Agreement.

3. TriMet Obligations

TriMet agrees to:

- a. Collaborate with COP to identify TOD Planning Project work that can be completed by COP staff, specifically staff in the bureaus of Planning and Sustainability and Transportation;
- b. Collaborate with COP on tasks identified for COP staff member(s) to perform;
- c. Appoint as TriMet's project manager for this Agreement, Guy Benn, TriMet (503-962-2190) (benn@trimet.org) (the "TriMet Project Manager");
- d. Coordinate with COP to track, on an ongoing basis, the value of \$130,000 in-kind staff contributions provided to the TOD Planning Work;
- e. Work collaboratively with the FTA to ensure COP's in-kind staff contributions to the TOD Planning Work are properly submitted to, and credited by, the FTA.

4. COP Obligations

COP agrees to:

- a. Collaborate with TriMet to identify TOD Planning Project work that can be completed by Bureau of Planning and Sustainability and Bureau of Transportation staff and assign staff to perform the work;

- b. Perform, through the Bureau of Planning and Sustainability and Bureau of Transportation, the work agreed upon by the Parties and set out in project task orders, including collaboration with TriMet's consultant team, other jurisdictional partners, and identified stakeholders;
- c. Appoint Eric Engstrom with the Bureau of Planning and Sustainability (503-823-3329) (eric.engstrom@portlandoregon.gov) as COP's primary project liaison for this Agreement, (the "COP Project Liaison") and April Bertelson (503-823-6177) (april.bertelsen@portlandoregon.gov) as a supporting coordinator for the Bureau of Transportation's contribution to this work; and
- d. On a monthly basis, submit to TriMet an accounting detailing the TOD Planning Project work performed by COP staff members. Monthly submittals shall reference this Agreement and include the staff member names, titles, hourly rates, overhead rate (if agreed to by TriMet and in compliance with the federal Cost Principles under Uniform Guidance (2 CFR 200, Subpart E)), dates the work was performed, and a brief description of the TOD Planning Project work performed. In addition, COP shall certify that submitted costs are not being reimbursed by another agency. Upon request from TriMet, COP shall provide copies of relevant timesheets and other financial reports or supporting documentation, to ensure compliance with Federal requirements is met. Submittals shall be delivered to TriMet as follows:

TriMet Finance Department
Attn: Meshawn Muchow
1800 First Avenue, Suite 300
Portland, OR 97201

With a copy to TriMet's Project Manager at the same address.

5. General Provisions

- a. **Indemnity.** Subject to the limitations of the Oregon Tort Claims Act and the Oregon Constitution, COP agrees to indemnify, hold harmless and defend TriMet, its officers, employees and agents from and against all claims, suits, actions, or whatsoever nature, damages or losses, and all expenses and costs incidental to the investigation and defense thereof including reasonable attorneys' fees, resulting from or arising out of the acts of COP, its officers, employees or agents under this Agreement. Subject to the limitation of the Oregon Tort Claims Act and the Oregon Constitution, TriMet agrees to indemnify, hold harmless and defend COP, its officers, employees and agents from and against all claims, suits, actions, or whatsoever nature, damages or losses, and all expenses and costs incidental to the investigation and defense thereof including reasonable attorneys' fees, resulting from or arising out of the acts of COP, its officers, employees or agents under this Agreement. The indemnification obligations under this Section shall survive termination of this Agreement.
- b. **Term; Termination.** The term of this Agreement is from the Effective Date until the

date the FTA Pilot Project work is complete. Either Party may terminate this Agreement in the event of a material breach by the other Party, but only if the other Party fails to cure the breach within fifteen (15) days of receipt of written notice specifying the breach or, if the breach is of a character which cannot be cured within 15 days, if the Party in receipt of the notice commences working to cure the breach within 15 days and continues in good faith until cured.

- c. **Notice.** Formal notices required or permitted under this Agreement shall be deemed sufficiently given by one Party when received by the other Party after being sent postage prepaid by United States Postal Service certified or registered mail or by overnight courier addressed as follows:

If to TriMet: Guy Benn, Project Manager
 TriMet
 1800 SW First Avenue, Suite 300
 Portland, OR 97201

with a copy to: Lance Erz, Sr. Deputy General Counsel
 TriMet
 1800 SW First Avenue, Suite 300
 Portland, OR 97201

If to COP : Eric Engstrom, Project Manager
 Bureau of Planning and Sustainability
 1810 SW Fifth Ave., Suite 710
 Portland, OR 97201

Either Party may change its address by notice given to the other.

- d. **Maintenance of Records.** COP shall cooperate in good faith with TriMet and the FTA to provide records in a form satisfactory to FTA. TriMet shall take the lead and assist COP as necessary for compliance with FTA requirements.
- e. **Audit and Inspection of Records.** The Parties acknowledge and agree that each Party, the federal government, and their duly authorized representatives shall have access to each Party's books, documents, papers, and records which are directly pertinent to this Agreement for the purpose of making audit, examination, excerpts, and transcripts for a period of three (3) years after the Agreement has expired. Copies of applicable records shall be made available upon request. The cost of such inspection shall be borne by the inspecting Party.
- f. **Documents.** All records, reports, data, documents, systems, and concepts, whether in the form of writings, figures, graphs, or models that are prepared or developed in connection with this Agreement shall become public property. All design drawings and documents prepared by COP under this Agreement shall be property of TriMet.
- g. **Successors; No Assignment.** The benefits conferred by this Agreement, and the obligations assumed hereunder, shall inure to the benefit of and bind the successors of the Parties. The

rights and obligations of each Party under this Agreement may not be assigned in whole or in part without the prior written consent of the other Party.

- h. Choice of Law; Dispute Resolution; Jurisdiction and Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon. Any dispute that is not resolved by mutual agreement shall be submitted to mediated negotiation prior to any party commencing litigation. In such an event, the Parties to this agreement agree to participate in good faith in a non-binding mediation process. The mediation shall take place in Portland, Oregon. The mediator shall be selected by mutual agreement of the Parties, but in the absence of such agreement each Party shall select a temporary mediator and those mediators shall jointly select the permanent mediator. The mediator's fees and costs shall be borne equally by the Parties. In the event mediation is unsuccessful, the Parties are free to pursue any legal remedies that may be available. Jurisdiction and venue for any litigation between COP and TriMet arising under this Agreement or out of work performed pursuant to this Agreement shall be in the Multnomah County Circuit Court or the United States District Court for the District of Oregon, located in Portland, Oregon.
- i. Waivers.** No waiver by either party of any provision of this Agreement shall be of any force or effect unless in writing. Except as otherwise provided herein, no waiver made by a Party with respect to the performance, or manner or time thereof, or obligation of the other Party or any condition inuring to its benefit under this Agreement shall be considered a waiver of any other rights of the Party making the waiver or a waiver by the other Party not joining in such waiver, and no such waiver shall be construed to be a continuing waiver.
- j. No Third-Party Beneficiaries.** The Parties intend that the rights, obligations, and covenants in this Agreement shall be exclusively enforceable by the Parties. There are no third-party beneficiaries to this Agreement, either express or implied.
- k. Severability/Survivability.** If any clause, sentence, or portion of the terms and conditions of this Agreement becomes illegal, null, or void for any reason, the remaining portions will remain in full force and effect to the fullest extent permitted by law. All provisions concerning indemnity and continuing control survive the termination of this Agreement for any cause.
- l. Interpretation of Agreement.** Any titles of the sections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions. This Agreement shall not be construed for or against any Party by reason of the authorship or alleged authorship of any provision.
- m. Integration, Modification, and Administrative Changes.** This Agreement includes the entire agreement between the Parties on the subject matter contained in this Agreement and supersedes any and all prior or contemporaneous written or oral understandings, representations, or communications of every kind. No course of dealing between the Parties and no usage of trade will be relevant to supplement any term used in this Agreement. This Agreement may only be modified in writing by a modification that has been signed by individuals authorized to bind each of the Parties contractually. The Parties shall not make

changes to this Agreement through the issuance of permits, approvals, or other administrative requirements or processes.

- n. Compliance with Law.** The parties recognize that funds provided by the FTA will be used to pay for a portion of the TOD Planning Project. Each Party agrees to comply with all local, state, and federal laws and regulations and fully understands and agrees to comply with all applicable requirements governing the work of FTA and contractors.
- o. Federal Funding Limitation.** To the extent applicable to each of the Parties, this Agreement is subject to all federal provisions prescribed for third-party contracts by the federal grant agreement.
- p. No Partnership; No Participation.** Each of the Parties hereto shall be deemed an independent contractor for purposes of this Agreement. No representative, agent, employee or contractor of one Party shall be deemed to be a representative, agent, employee or contractor of the other Party for any purpose, except to the extent specifically provided herein. Nothing herein is intended, nor shall it be construed, to create between the Parties any relationship of principal and agent, partnership, joint venture or any similar relationship, and each Party hereby specifically disclaims any such relationship. No Party or its employees is entitled to participate in a pension plan, insurance, bonus, or similar benefits provided by any other Party.
- q. Authority.** Each party represents that it has the authority to enter into this Agreement on its behalf and the individual signatory for each Party represents that he or she is authorized by that Party to execute and deliver this Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date last written below.

**TRI-COUNTY METROPOLITAN
TRANSPORTATION DISTRICT OF
OREGON**

CITY OF PORTLAND

By: _____
Shelley Devine
Executive Director, Legal Division

By: _____
Name: _____
Title: _____

Date: _____

Date: _____

APPROVED AS FORM

APPROVED AS FORM

By _____
Deputy General Counsel

By _____
City of Portland

Date _____

Date _____